
OLR Bill Analysis

sHB 5309 (as amended by House "A")*

AN ACT CONCERNING ABANDONED VESSELS.

SUMMARY:

This bill replaces existing procedures for seizing and disposing of abandoned vessels and establishes a new administrative process for doing so.

The bill replaces current law, which (1) allows an officer to seize an abandoned vessel and deliver it to a person for storage; (2) permits that person to sell it if it is unclaimed after 60 days; and (3) specifies that sale proceeds cover storage costs and are then paid to the owner, or the state if unclaimed. The bill instead generally allows certain public or private parties to begin a process to take ownership of an abandoned vessel and ownership may occur after 45 days if the vessel is not claimed by the owner, a lienholder, or a person with a security interest.

The bill makes abandoning a vessel punishable by a fine of between \$300 and \$500, unless the abandonment occurs during, and because of conditions that caused, a declared emergency.

It also deems waste oil, fuel, antifreeze, or other hazardous materials stored on an abandoned vessel to be household hazardous waste for disposal purposes if the materials are (1) incidental to the vessel's operation and maintenance and (2) removed to prepare for the vessel's storage, removal, or destruction. This treats the materials in the same way as waste generated during routine household activities and exempts them from hazardous waste requirements.

*House Amendment "A" (1) requires the secretary of the state to provide the Department of Energy and Environmental Protection (DEEP) commissioner with copies of security documents, instead of only informing him of lienholders or secured parties, when he notifies

the secretary of an abandoned vessel; (2) eliminates a 10-day deadline for the secretary to respond to the commissioner's notice; (3) makes the commissioner, instead of the secretary, notify lienholders and secured parties of an abandoned vessel; (4) generally requires vessel lienholders and people with security interests to (a) contact the commissioner or (b) remove the vessel to prevent having a lien or interest discharged; (5) makes the commissioner file a notice of discharge with the secretary for liens or security interests that are not preserved; (6) subjects vessel lienholders and people with security interests holders to liability for physical injury, in addition to damage, caused by removing an abandoned vessel from the property of a person with standing; and (7) makes several minor and technical changes to the original file.

EFFECTIVE DATE: January 1, 2015

PRESUMPTION OF VESSEL ABANDONMENT

Abandoned Vessel

The bill generally expands the circumstances in which a vessel is considered abandoned.

The law prohibits abandoning a vessel on state waters or on someone's property without the property owner's consent. Under current law, a vessel is presumed abandoned if it is left on (1) state waters not moored, anchored, or made fast to the shore and unattended for more than 24 hours or (2) someone else's property without consent for more than 24 hours.

The bill retains these presumptions but allows former tenants who leave behind a vessel on property they rented, leased, or occupied for up to 90 days before it is considered abandoned. It also presumes a vessel abandoned if it is:

1. left at a mooring for more than 60 days since the last full payment was received;
2. left at a storage, repair, or other commercial facility for more than one year since the facility received the last full payment;

3. found during a declared emergency either in a (a) public right-of-way hindering access to the right-of-way or public utilities or (b) location or condition creating an imminent danger to public safety or the environment; or
4. left on state waters for more than 24 hours and not properly registered.

Vessel Owner

Current law presumes that the last owner of record when the vessel was abandoned is the person who abandoned it or caused its abandonment. The bill generally retains this presumption. It specifies that the owner is the person on record with the government agency that registered the vessel, except (1) if the person provides the DEEP commissioner with sufficient evidence showing a transfer of vessel ownership before abandonment and (2) the last owner of record for any vessel with a Connecticut-issued certificate of title is the owner indicated on the certificate. Vessels documented with the U.S. Coast Guard under maritime or admiralty law are considered registered with the Coast Guard.

ABANDONED VESSEL PROCEDURE

Current Law – Provisions Eliminated

The bill eliminates existing procedures regarding abandoned vessels and establishes new ones. It eliminates current law that:

1. allows any officer authorized to enforce the state's boating laws to take an abandoned vessel into custody and store it;
2. protects an officer from liability for damage to a vessel when in his or her custody;
3. provides a lien for (a) charges incurred by the officer in taking custody of the vessel and (b) storage charges of the owner or keeper of a marina or other location where the vessel is stored;
4. allows the owner or keeper to sell the vessel to recoup the storage charges if it is stored for at least 60 days;

5. requires notice of the sale to be (a) provided to the vessel owner and the DEEP, motor vehicles, and transportation commissioners five days before the sale or (b) published in a newspaper at least three times starting at least five days before the sale if the owner is unknown; and
6. requires (a) paying the sale proceeds, minus the amounts due to the marina owner or keeper and the officer who took the vessel for storage, to the vessel owner if claimed within one year of the sale and (b) unclaimed funds to escheat to the state.

Who Can Begin the Process

Under the bill, only a party with standing, or its designated agent identified in writing on the notification of abandoned vessel (see below), may begin the abandoned vessel process. The bill gives the following parties standing:

1. the owner of property where the abandoned vessel came to rest or to which it was made fast;
2. a harbormaster, police department, municipality, or agent of the state that agrees to accept or process an abandoned vessel;
3. an emergency responder, including a responding utility or person or firm (a) contracted by the government to provide emergency services and (b) responding to a bona fide emergency during or after an emergency declared by the President or governor; and
4. a licensed motor vehicle dealer who is authorized by law to tow or transport vehicles or a professional marine salvager, when the dealer or salvager is employed by any of the above parties.

The bill allows these parties to recover from the person who abandoned the vessel the expenses they incur because of the vessel's abandonment. It generally relieves any person from civil liability for damage to an abandoned vessel if the person acts in good faith and without malice when processing, storing, or moving the vessel

according to the bill's provisions. (But the bill makes vessel lienholders and persons with security interests liable for damage or physical injury when removing abandoned vessels, see below).

Determining Interested Parties of Abandoned Vessels

Vessels Registered in Connecticut. The bill requires the DEEP commissioner to notify the secretary of the state by email when he receives a notice of an abandoned vessel (see below) that is or was registered in Connecticut. He must (1) describe the vessel and (2) identify the owner's name, if known, as recorded with the Department of Motor Vehicles (DMV).

The secretary of the state must then provide the commissioner with copies she has of any filed (1) financing statement for the abandoned vessel that names the owner as the debtor and describes the vessel, by identification number or type, as collateral or that states the collateral is "all assets" or "all property" of the owner or (2) vessel lien against the abandoned vessel. The bill requires the commissioner to provide written notice to all of the secured parties on the financing statements and vessel lienholders of the vessel's abandonment. The notice must (1) describe the consequences of abandonment and (2) provide instructions for how to retrieve the vessel.

Under the bill, if an abandoned vessel is documented according to federal marine or admiralty law, the commissioner must reasonably try to (1) determine if liens, ship mortgages, or security interests exist against the vessel and (2) notify the lienholders, ship mortgagees, and people with security interests of the vessel's status and location.

Vessels Registered in Other States. If an abandoned vessel is registered in another state, the bill requires the DEEP commissioner to send notice of the abandoned vessel by email to the other state's registering agency and agencies responsible for recording vessel liens and security interests. Under the bill, the commissioner must provide these agencies 15 business days to (1) return information on the vessel's owner and anyone who registered or recorded a vessel lien or security interest or (2) intervene in the abandoned vessel process. If

these agencies identify vessel lienholders or people with security interests, the commissioner must make reasonable attempts to notify them.

The bill relieves the commissioner of any further obligation to identify or contact the last owner of record, vessel lienholders, or people with security interests if the other state's registering agency fails to provide the contact information or intervene in the process within 15 business days of receiving the notice.

But for vessels documented under federal maritime or admiralty law, the commissioner may use information from the documentation to identify the last owner of record.

Process for Disposing of Abandoned Vessels

The bill establishes a new online procedure to dispose of abandoned vessels. Abandoned vessels with current documentation under federal maritime or admiralty law are subject to the initial notice and labeling procedures, but not the 45-day abandoned vessel period or transfer of ownership provisions. Federal law generally governs these vessels.

Notice of Abandoned Vessel. The bill requires a party with standing to file a "notice of abandoned vessel" with the DEEP commissioner to start the abandonment process. The notice must be notarized and filed on forms the commissioner prescribes. The commissioner also prescribes the manner of filing, which may be in person, electronically, or by mail or paid delivery service, and the filing fee is \$20. But for filings occurring within 45 days after the end of an emergency declared by the governor that results in widespread vessel displacement, no filing fee or notarization is necessary.

The bill requires that a notice of abandoned vessel be prepared and submitted to the commissioner for each abandoned vessel. It includes vessels (1) documented with the U.S. Coast Guard under federal maritime or admiralty law or (2) relocated to an abandoned vessel holding area by people or agents acting in a relief or emergency capacity.

Stolen or Missing Vessels. Under the bill, when the DEEP commissioner receives the filing, he must determine if the vessel is reported as stolen or missing. If so, he must notify the police department with which the report was filed and the department must (1) take the vessel into custody or (2) arrange for the return of the vessel to its owner at the expense of the person who abandoned it.

Internet Notice. The bill requires the DEEP commissioner to post information about the report of the abandoned vessel (presumably the notice) on a publicly accessible abandoned vessel website. The information must be sufficient to identify the vessel and include, if known, at least (1) the vessel's registration number, make, model, length, and color; (2) the town and water body nearest to where the vessel was abandoned; and (3) instructions for contacting the commissioner.

The law generally prohibits public agencies from disclosing the residential addresses of certain public employees (e.g., judges, firefighters, law enforcement officers). But during a declared emergency and until a vessel abandoned during the emergency is no longer abandoned, the bill allows the commissioner to publish any abandoned vessel owner's name and town of record as obtained from vessel registration records.

Certified Letter. The DEEP commissioner must send a certified letter to the person who abandoned the vessel, who is presumed to be the owner, if the person can be identified. In the letter, he must (1) identify the vessel, (2) explain the consequences of abandonment, and (3) provide instructions for retrieving the vessel.

The bill allows the commissioner to waive this certified mail requirement if he establishes contact with the person by email or some other communication method he determines suitable.

Label. The bill requires the DEEP commissioner to provide the party with standing with a water resistant adhesive label to be immediately affixed to the abandoned vessel. The label must (1) advise that the vessel is being processed according to the bill's abandoned

vessel procedure and (2) provide instructions for contacting the commissioner to get more information or intervene. It must be placed in a prominent location and in a way that is visible to an approaching person. The bill also requires placing this label on abandoned federally documented vessels, although these vessels are exempt from the transfer of ownership provisions of the abandonment process.

45-Day Abandoned Vessel Period. Under the bill, a 45-day abandoned vessel period starts when the first attempt to deliver the certified letter to the person who abandoned the vessel is made. For unregistered vessels, the period begins when the DEEP commissioner posts information about the vessel on the publicly accessible abandoned vessel website.

The bill allows the commissioner to suspend the period for up to six months for just cause if he states in writing on the website the (1) reason for the suspension and (2) elements needed to resume the 45-day period.

Owners Reclaiming Vessels. The bill gives a person who abandoned a vessel until the last day of the 45-day abandoned vessel period to remove the vessel from the property or possession of the party with standing, if the person who abandoned the vessel contacts the DEEP commissioner. But it allows this person to ask for the abandoned vessel period to be suspended if there is just cause. The bill makes the person who abandoned the vessel liable for any property damage caused by removing it.

If the person who abandoned the vessel fails to remove it, the DEEP commissioner, in conjunction with the DMV commissioner, must (1) cancel the vessel's registration and (2) issue a notice of assumed ownership to the party with standing (see below).

Liens and Security Interests. Under the bill, any party with a vessel lien that is filed with the secretary of the state must seek a writ of attachment from the Superior Court or else their lien is discharged. Similarly, anyone with a security interest against an abandoned vessel must take action, as allowed by the law on rights after default, or the

interest is discharged. These must be (1) done at the party's or person's expense and (2) started before DEEP issues a notice of assumed ownership to the party or person (but the DEEP commissioner issues the notice to the party with standing, as defined above, and a lienholder or person with a security interest is not a party with standing). Under the bill, the DEEP commissioner must file a notice of discharge of any lien or security interest with the secretary of the state. The notice must (1) identify the vessel lien or security interest by a file number, (2) describe the vessel by identification number or type, and (3) state that a notice of assumed ownership was issued to the party with standing.

Similarly, the bill allows vessel lienholders and people with security interests on abandoned vessels filed with a federal agency to also seek a writ from the Superior Court, as described above, or under any other applicable state or federal law.

Under the bill, vessel lienholders that do not file their liens and those that file them in another state are unable to seek the writ. But the bill allows lienholders and people with security interests, whether or not they have the writ, to request a suspension of the procedures for the removal, transport, or storage of an abandoned vessel.

The bill makes vessel lienholders and people with security interests who take custody of abandoned vessels by entering onto the properties of parties with standing liable to the parties for any damage or physical injury caused by the entry or the taking of the vessel.

Under the bill, an abandoned vessel in the custody of a vessel lienholder, person with a security interest, or their agents, is no longer abandoned and must be sold according to existing law regarding vessel liens.

Notice of Assumed Ownership. The bill requires the DEEP commissioner to issue a "notice of assumed ownership" to the party with standing on the day after the abandoned vessel period ends if the person who abandoned the vessel or any vessel lienholder or person with a security interest fails to (1) contact him or (2) remove the vessel.

The notice must be sent by certified mail with a copy sent by email to the DMV commissioner.

For abandoned vessels subject to vessel liens or security interests filed with the secretary of the state, the DEEP commissioner must file a notice of discharge with the secretary. The bill requires the notice to (1) identify the vessel lien or security interest by a file number, (2) describe the vessel by identification number or type, and (3) indicate that a notice of assumed ownership was issued to the party with standing. The notice of assumed ownership (1) terminates all liens and security interests against the vessel and (2) satisfies the law's requirements for lien removal.

Once the notice of assumed ownership is issued, the party with standing is considered the abandoned vessel's owner and the original document is prima facie evidence of ownership. The bill also makes the notice prima facie evidence of a transfer of ownership, by law, from a titleholder to the party with standing. The notice is deemed sufficient documentation to establish the ownership interest or right to acquire the interest.

The bill requires the DMV commissioner to then cancel the vessel's existing registration and note the ownership transfer to the party with standing in the vessel's registration record, if it exists and is accessible. For vessels registered by some other agency, the DMV commissioner must electronically notify the agency of the ownership transfer.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute

Yea 27 Nay 0 (03/07/2014)

Judiciary Committee

Joint Favorable

Yea 36 Nay 0 (04/09/2014)